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THE CIVIL PROCEDURE CODE
(CAP. 33)

RULES

(Made under section 81)

THE CIVIL PROCEDURE CODE (AMENDMENT OF THE FIRST SCHEDULE)
RULES, 2021

ARRANGEMENT OF ORDERS

1. Citation.
2. Amendment of Order VIII.
3. Deletion and substitution of Order XVIII.

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THE CIVIL PROCEDURE CODE (AMENDMENT OF THE FIRST SCHEDULE)
RULES, 2021

Citation
Cap. 33

1. These Rules may be cited as the Civil Procedure Code (Amendment of the First Schedule) Rules, 2021 and shall be read as one with the First Schedule to the Civil Procedure Code, hereinafter referred to as the "principal Schedule."

Amendment
of Order VIII

2. The principal Schedule is amended in Order VIII rule 22(1) by adding the phrase "and determine whether the trial shall proceed orally or by witness statements and giving appropriate direction in that behalf" between the word "trial" and a "full stop."

Deletion and
substitution of
Order XVIII

3. The principal Schedule is amended by deleting Order XVIII and substituting for it the following new Order-

"ORDER XVIII
HEARING OF SUIT AND EXAMINATION OF WITNESSES

Right to begin

1. The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks,

in which case the defendant has the right to begin.

Witness
statement
Cap. 6

2.-(1) In any suit, evidence in chief shall be given orally or by a witness statement.

(2) For the purpose of this Order oral evidence has the meaning ascribed to it by section 3 of the Evidence Act.

(3) A witness statement shall;-

- (a) be made on oath or affirmation;
- (b) contain the name, age, address and occupation of the witness;
- (c) so far as reasonably practicable, be in the intended witness's own words;
- (d) sufficiently identify any document to which the statement refers without repeating its contents unless it is necessary in order to identify the document;
- (e) not include matters of information or belief which are not admissible and where admissible, shall state the source of matters of information or belief;
- (f) neither contain lengthy quotation

from documents or
engage in legal or
other arguments;
(g) include a statement
by the intended
witness that he
believes the
statements of fact in
it to be true;
(h) be dated and signed
or otherwise
authenticated by the
intended witness;
(i) be in numbered
paragraphs; and
be in the language of the court.

(4) Where the witness is
not conversant with the
language of the court, but can
make himself understood and
can understand the written
language of the court, the
statement need not be in his own
words:

Provided that, these
matters are indicated in the
statement itself and recorded so
as to express as accurately as
possible the substance of his
evidence.

(5) The witness
statement shall be substantially
in the form made under
section101(1) of the Code.

Filing and
service of
witness
statement

3. -(1) After completion
of mediation the plaintiff shall,
in not less than seven days

before the time fixed by court for hearing, file a statement by each witness whom he intends to call at the trial, setting out the substance of his evidence.

(2) The respondent shall, within fourteen days of the closure of the plaintiff's case file a statement by each witness whom he intends to call in defence.

(3) Copies of the witness statements shall be served on the other party not later than five days after being filed.

(4) Each witness statement shall be filed together with sufficient certified two copies for each magistrate or judge where there are more than one trial judge or magistrate, and all other plaintiffs in the same case and the defendant.

Consequence
of failure to
serve witness
statement

4. Where the statement of an intended witness is not served on the other party within the time prescribed in rule 3(3) of this Order, the statement shall, unless the court extends time for such service, be struck out.

Formal
production of
statements and
tendering of
exhibits

5.- (1) A party on whose behalf a witness statement has been filed shall cause the attendance of his witness during the hearing for the purpose of formal production of his statement, and tendering of

exhibits or cross examination, if any.

(2) When a witness appears for formal production of his statement and tendering of exhibits, he shall be sworn in the manner prescribed by the law in force as to swearing of witnesses.

(3) Once the witness statement has been formally produced in court, it shall form part of the record of the trial and it shall be read loudly by or on behalf of the witness.

(4) The witness whose statement has been formally produced may be cross-examined and re-examined.

(5) Where a witness fails to appear for production of his statement, tendering of exhibit or cross examination, if any, the court shall strike out his statement from the record, unless it is satisfied that there is good cause to be recorded by the court for such failure.

Statement of
the case and
production of
evidence

6. -(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may

then address the court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

Evidence
where there are
several issues

7. Where there are several issues the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and in the latter case, the party beginning may produce evidence and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

Manner of
giving
evidence

8. Where the court orders hearing to proceed orally or where a witness appears for formal production of his statement, and tendering of exhibits or cross examination, the evidence of the witness shall be given orally in open court under the personal direction and superintendence of a presiding judge or magistrate.

Any particular
question and
answer may
be taken down

9. The Court may, of its own motion or on the application of any party or his

advocate, take down any particular question and answer or any objection to any question, if there appears to be any special reason for so doing.

How evidence shall be taken

10. The evidence of each witness shall be taken down in writing or electronically in the language of the court, by or under the personal direction and superintendence of the presiding judge or magistrate, not in the form of question and answer, but in that of a narrative and the presiding judge or magistrate shall sign the same.

Questions objected to and allowed by court

11. Where any question put to a witness is objected to by a party or his advocate, and the court allows the same to be put, the presiding judge or magistrate shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the court thereon.

Remarks on demeanour of witness

12. The court may record such remarks as it thinks material with respect to the demeanour of any witness while under examination.

Power to direct shorthand record

13. -(1) Notwithstanding anything in the foregoing rules of this Order, the presiding judge or magistrate may direct a court stenographer to make a

shorthand record of the whole of, or any part of, or the substance of, the evidence of any witness or other proceedings.

(2) A shorthand record made under the provisions of sub-rule (1) shall, as soon as practicable thereafter, be transcribed and word processed by the same or any other court stenographer who shall certify the resultant word processed transcript to be correct and complete and thereupon it shall form part of the record.

(3) In this rule "court stenographer" means any person appointed by the Chief Justice to be a court stenographer.

Power to
examine
witness
immediately

14.-(1) Where a witness is about to leave the jurisdiction of the court or other sufficient cause is shown to the satisfaction of the court why his evidence should be taken immediately the court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

Power to deal
with evidence
taken before
another judge
or magistrate

15.-(1) Where a judge or magistrate is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum has been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it:

Provided that the reasons for taking over are recorded in the proceedings by the successor judge or magistrate at the time of taking over and communicated to the parties.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 21 of this Code.

Court may
recall and
examine
witness

16. The court may, at any stage of a suit recall any witness who has been examined and may, subject to the law of evidence, put such questions to him as it thinks fit.

Power of
court to
inspect

17. The court may at any stage of a suit inspect any property or thing concerning which any question may arise.

Hearing of
appeals and
applications

18. Hearing of any matter or proceeding other than a suit, may be conducted-

(a) orally by parties or their representatives being physically present in the courtroom;

(b) by way of written submissions; or

(c) remotely in accordance with the Judicature and Application of Laws (Remote Proceedings and Electronic Recording) Rules, 2021.

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Appearance
for cross
examination

19.-(1) Where an application is supported by an affidavit, the court on its own motion or upon application by a party may order the deponent to appear for cross-examination.

(2) Where an order has been made under sub rule(1) of this rule, and the deponent does not appear, his affidavit shall not be used as evidence unless the court is satisfied that there is good cause to be recorded in the proceedings for his non-appearance.

(3) Where the court admits an affidavit of a person who has failed to appear for cross-examination, lesser weight shall be attached to such affidavit."

Dar es Salaam,
30th September, 2021

IBRAHIM HAMIS JUMA
Chief Justice

I CONSENT

Dodoma,
6th October, 2021

PALAMAGAMBA J. A. M. KABUDI
*Minister for Constitutional and Legal
Affairs*